

DRAFT RECODIFICATION

Title 79 RCW PUBLIC LANDS

Chapter 79.36 RCW EASEMENTS AND RIGHTS-OF-WAY

PART I Acquisition

RCW ~~76.16.010~~ 79.36.310 Acquisition of property interests for access authorized-- Maintenance.

Whenever the department of natural resources, hereinafter referred to as the department, ~~shall find it to be for~~ finds that it is in the best interests of the state of Washington to acquire any property or use of a road in private ownership to afford access to state timber and other valuable material for the purpose of developing, caring for or selling the same, the acquisition of such property, or use thereof, is hereby declared to be necessary for the public use of the state of Washington, and ~~said the~~ department is hereby authorized to acquire such property or the use of such roads by gift, purchase, exchange or condemnation, and subject to all of the terms and conditions of such gift, purchase, exchange or decree of condemnation to maintain such property or roads as part of the department's land management road system.

[1963 c 140 § 1; 1945 c 239 § 1; Rem. Supp. 1945 § 5823-30.]

Notes:

Eminent domain: State Constitution Art. 1 § 16; chapter 8.04 RCW.

State lands subject to easements for removal of materials: RCW 79.01.312 and 79.36.230.

RCW ~~76.16.020~~ 79.36.320 Condemnation--Duty of attorney general.

The attorney general of the state of Washington is hereby required and authorized to condemn said property interests found to be necessary for the public purposes of the state of Washington, as provided in RCW ~~76.16.010~~ 79.36.310, and upon being furnished with a certified copy of the resolution of the department, describing said property interests found to be necessary for the purposes set forth in RCW ~~76.16.010~~ 79.36.310, the attorney general shall immediately take steps to acquire said property interests by exercising the state's right of eminent domain under the provisions of chapter 8.04 RCW, and in any condemnation action herein authorized, the resolution so describing the property interests found to be necessary for the

purposes set forth above shall, in the absence of a showing of bad faith, arbitrary, capricious or fraudulent action, be conclusive as to the public use and real necessity for the acquisition of said property interests for a public purpose, and said property interests shall be awarded to the state without the necessity of either pleading or proving that the department was unable to agree with the owner or owners of said private property interest for its purchase. Any condemnation action herein authorized shall have precedence over all actions, except criminal actions, and shall be summarily tried and disposed of.

[1963 c 140 § 2; 1945 c 239 § 2; Rem. Supp. 1945 § 5823-31.]

RCW ~~76.16.030~~ 79.36.330 Disposal of property interests acquired under this chapter.

In the event the department should determine that the property interests acquired under the authority of this chapter are no longer necessary for the purposes for which they were acquired, the department shall dispose of the same in the following manner, when in the discretion of the department it is to the best interests of the state of Washington to do so, except that property purchased with educational funds or held in trust for educational purposes shall be sold only in the same manner as are public lands of the state:

(1) Where the state property necessitating the acquisition of private property interests for access purposes under authority of this chapter is sold or exchanged, ~~said the~~ acquired property interests may be sold or exchanged as an appurtenance of ~~said the~~ state property when it is determined by the department that sale or exchange of ~~said the~~ state property and acquired property interests as one parcel is in the best interests of the state.

(2) If ~~said the~~ acquired property interests are not sold or exchanged as provided in ~~the preceding~~ subsection (1) of this section, the department shall notify the person or persons from whom the property interest was acquired, stating that ~~said the~~ property interests are to be sold, and that ~~said the~~ person or persons shall have the right to purchase the same at the appraised price. ~~Said The~~ notice shall be given by registered letter or certified mail, return receipt requested, mailed to the last known address of ~~said the~~ person or persons. If the address of ~~said the~~ person or persons is unknown, ~~said the~~ notice shall be published twice in an official newspaper of general circulation in the county where the lands or a portion thereof is located. The second notice shall be published not less than ten nor more than thirty days after the notice is first published. ~~Said The~~ person or persons shall have thirty days after receipt of the registered letter or five days after the last date of publication, as the case may be, to notify the department, in writing, of their intent to purchase the offered property interest. The purchaser shall include with his or her notice of intention to purchase, cash payment, certified check or money order in an amount not less than one-third of the appraised price. No instrument conveying property interests shall issue from the department until the full price of the property is received by ~~said the~~ department. All costs of publication required under this section shall be added to the appraised price and collected by the department upon sale of ~~said the~~ property interests.

(3) If ~~said the~~ property interests are not sold or exchanged as provided in ~~the preceding~~ subsections (1) and (2) of this section, the department shall notify the owners of land abutting ~~said the~~ property interests in the same manner as provided in ~~the preceding~~ subsection (2) of this section and their notice of intent to purchase shall be given in the manner and in accordance with the same time limits as are set forth in ~~the preceding~~ subsection (2) of this section ~~:- PROVIDED, That However,~~ if more than one abutting owner gives notice of intent to purchase ~~said the~~

property interests, the department shall apportion them in relation to the lineal footage bordering each side of the property interests to be sold, and apportion the costs to the interested purchasers in relation thereto : ~~PROVIDED FURTHER, That~~ Further, no sale is authorized by this section unless the department is satisfied that the amounts to be received from the several purchasers will equal or exceed the appraised price of the entire parcel plus any costs of publishing notices.

(4) If no sale or exchange is consummated as provided in subsections (1), ~~(2) and through~~ (3) ~~hereof of this section~~, the department shall sell ~~said the~~ properties in the same manner as ~~public lands of the state of Washington~~ state lands are sold.

(5) Any disposal of property interests authorized by this chapter shall be subject to any existing rights previously granted by the department.

[1963 c 140 § 3; 1945 c 239 § 3; Rem. Supp. 1945 § 5823-32.]

RCW ~~76.16.040~~ 79.36.340 Acquisition--Payment--Moneys available to department.

The department in acquiring any property interests under the provisions of this chapter, either by purchase or condemnation, is hereby authorized to pay for the same out of any moneys available to the department ~~of natural resources~~ for this purpose.

[1963 c 140 § 4; 1945 c 239 § 4; Rem. Supp. 1945 § 5823-33.]

PART II Granting

RCW ~~79.01.332~~ 79.36.350 Certain state lands subject to easements for removal of valuable materials--Application for right of way--Appraisal of damage--Certificate, contents.

Any person, firm or corporation, engaged in the business of logging or lumbering, quarrying, mining or removing sand, gravel or other valuable materials from land, and desirous of obtaining a right of way for the purpose of transporting or moving timber, minerals, stone, sand, gravel or other valuable materials from other lands, over and across any state lands, or tide or shore lands belonging to the state, or any such lands sold or leased by the state since the fifteenth day of June, 1911, shall file with the ~~commissioner of public lands~~ department upon a form to be furnished for that purpose, a written application for such right of way, accompanied by a plat showing the location of the right of way applied for with references to the boundaries of the government section in which the lands over and across which such right of way is desired are located. Upon the filing of such application and plat, the ~~commissioner of public lands~~ department shall cause the lands embraced within the right of way applied for, to be inspected, and all timber thereon, and all damages to the lands affected which may be caused by the use of such right of way, to be appraised, and shall notify the applicant of the appraised value of such timber and such appraisal of damages. Upon the payment to the ~~commissioner of public lands~~ department of the amount of the appraised value of timber and damages, the ~~commissioner~~

department shall issue in duplicate a right of way certificate setting forth the terms and conditions upon which such right of way is granted, as provided in the preceding sections, and providing that whenever such right of way shall cease to be used for the purpose for which it was granted, or shall not be used in accordance with such terms and conditions, it shall be deemed forfeited. One copy of such certificate shall be filed in the office of the ~~commissioner of public lands~~ department and one copy delivered to the applicant.

[1927 c 255 § 83; RRS § 7797-83. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45. Formerly RCW 79.36.060.]

Notes:

Similar enactment: RCW 79.36.290.

RCW 79.01.414 79.36.355 Grant of such easements-- and Same rights as applicant may acquire in private lands by eminent domain.

The department ~~of natural resources~~ may grant to any person such easements and rights in state lands or state forest lands, as the applicant applying therefor may acquire in privately owned lands through proceedings in eminent domain. No grant shall be made under this section until such time as the full market value of the estate or interest granted together with damages to all remaining property of the state of Washington has been ascertained and safely secured to the state.

[1982 1st ex.s. c 21 § 175; 1961 c 73 § 12.]

Notes:

Savings--Captions--Severability--Effective dates--1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

RCW 79.01.416 79.36.360 Condemnation proceedings ~~where~~ involving state land is involved.

See RCW 8.28.010.

RCW 79.01.312 79.36.370 ~~Certain state~~ Lands subject to easements for removal of valuable materials.

All state lands granted, sold or leased since the fifteenth day of June, 1911, or hereafter granted, sold or leased, containing timber, minerals, stone, sand, gravel, or other valuable materials, or when other state lands contiguous or in proximity thereto contain any such valuable materials, shall be subject to the right of the state, or any grantee or lessee thereof who has acquired such other lands, or any such valuable materials thereon, since the fifteenth day of June, 1911, or hereafter acquiring such other lands or valuable materials thereon, to acquire the right of way over such lands so granted, sold or leased, for private railroads, skid roads, flumes, canals, watercourses or other easements for the purpose of, and to be used in, transporting and moving

such valuable materials from such other lands, over and across the lands so granted or leased, upon the state, or its grantee or lessee, paying to the owner of lands so granted or sold, or the lessee of the lands so leased, reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad company seeking to condemn private property.

[1982 1st ex.s. c 21 § 167; 1927 c 255 § 78; RRS § 7797-78. Prior: 1911 c 109 § 1. Formerly RCW 79.36.010.]

Notes:

Savings--Captions--Severability--Effective dates--1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Railroads, eminent domain: RCW 81.36.010 and 81.53.180.

Similar enactment: RCW 79.36.230.

State lands, eminent domain: RCW 8.28.010.

RCW 79.01.316 79.36.380 ~~Certain state lands subject to easements for removal of valuable materials--Private easement over public lands subject to common user in removal of valuable materials.~~

Every grant, deed, conveyance, contract to purchase or lease made since the fifteenth day of June, 1911, or hereafter made to any person, firm, or corporation, for a right of way for a private railroad, skid road, canal, flume, watercourse, or other easement, over or across any state lands for the purpose of, and to be used in, transporting and moving timber, minerals, stone, sand, gravel, or other valuable materials of the land, shall be subject to the right of the state, or any grantee or lessee thereof, or other person who has acquired since the fifteenth day of June, 1911, or shall hereafter acquire, any lands containing valuable materials contiguous to, or in proximity to, such right of way, or who has so acquired or shall hereafter acquire such valuable materials situated upon state lands or contiguous to, or in proximity to, such right of way, of having such valuable materials transported or moved over such private railroad, skid road, flume, canal, watercourse, or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation, or for the use of such private railroad, skid road, flume, canal, watercourse, or other easement, and upon complying with just, reasonable and proper rules and regulations relating to such transportation or use, which rates, rules, and regulations, shall be under the supervision and control of the utilities and transportation commission.

[1982 1st ex.s. c 21 § 168; 1927 c 255 § 79; RRS § 7797-79. Prior: 1911 c 109 § 2. Formerly RCW 79.36.020.]

Notes:

Savings--Captions--Severability--Effective dates--1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Similar enactment: RCW 79.36.240.

Washington utilities and transportation commission: Chapter 80.01 RCW.

~~RCW 79.01.320 79.36.390~~ ~~Certain state lands subject to easements for removal of valuable materials--Reasonable facilities and service for transportation must be furnished.~~

Any person, firm or corporation, having acquired such right of way or easement since the fifteenth day of June, 1911, or hereafter acquiring such right of way or easement over any state lands for the purpose of transporting or moving timber, mineral, stone, sand, gravel, or other valuable materials, and engaged in such business thereon, shall accord to the state, or any grantee or lessee thereof, having since the fifteenth day of June, 1911, acquired, or hereafter acquiring, from the state, any state lands containing timber, mineral, stone, sand, gravel, or other valuable materials, contiguous to or in proximity to such right of way or easement, or any person, firm, or corporation, having since the fifteenth day of June, 1911, acquired, or hereafter acquiring, the timber, mineral, stone, sand, gravel, or other valuable materials upon any state lands contiguous to or in proximity to the lands over which such right of way or easement is operated, proper and reasonable facilities and service for transporting and moving such valuable materials, under reasonable rules and regulations and upon payment of just and reasonable charges therefor, or, if such right of way or other easement is not then in use, shall accord the use of such right of way or easement for transporting and moving such valuable materials, under reasonable rules and regulations and upon the payment of just and reasonable charges therefor.

[1982 1st ex.s. c 21 § 169; 1927 c 255 § 80; RRS § 7797-80. Prior: 1911 c 109 § 3. Formerly RCW 79.36.030.]

Notes:

Savings--Captions--Severability--Effective dates--1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Similar enactment: RCW 79.36.250.

~~RCW 79.01.324 79.36.400~~ ~~Certain state lands subject to easements for removal of valuable materials--Duty~~ **Duties of utilities and transportation commission.**

Should the owner or operator of any private railroad, skid road, flume, canal, watercourse or other easement operating over lands acquired since the fifteenth day of June, 1911, or hereafter acquired, from the state, as in the previous sections provided, fail to agree with the state, or any grantee thereof, as to the reasonable and proper rules, regulations and charges, concerning the transportation of timber, mineral, stone, sand, gravel or other valuable materials, from lands contiguous to, or in proximity to, the lands over which such private railroad, skid road, flume, canal, watercourse or other easement, is operated, for transporting or moving such valuable materials, the state, or such person, firm or corporation, owning and desiring to have such valuable materials transported or moved, may apply to the state utilities and transportation commission and have the reasonableness of the rules and regulations and charges inquired into, and it shall be the duty of the utilities and transportation commission to inquire into the same and it is hereby given the same power and authority to investigate the same as it is now authorized to investigate or inquire into the reasonableness of rules, regulations and charges made by railroad companies, and it is authorized and empowered to make any such order as it would make in an inquiry against a railroad company, and in case such private railroad, skid road, flume, canal, watercourse or easement, is not then in use, may make such reasonable, proper and just rules and regulations concerning the use thereof for the purposes aforesaid as may be just and proper, and such order shall have the same force and effect, and be binding upon the parties to such hearing, as though such hearing and order was made affecting a common carrier railroad.

[1983 c 4 § 6; 1927 c 255 § 81; RRS § 7797-81. Prior: 1911 c 109 § 4. Formerly RCW 79.36.040.]

Notes:

Similar enactment: RCW 79.36.270.

Transportation, general regulations: Chapter 81.04 RCW.

RCW 79.01.328 79.36.410 ~~Certain state lands subject to easements for removal of valuable materials—Penalty for violation of orders—Reversion of easement.~~

In case any person, firm or corporation, owning or operating any private railroad, skid road, flume, canal, watercourse or other easement, over and across any state lands, or any lands acquired since the fifteenth day of June, 1911, or hereafter acquired, from the state, subject to the provisions of the preceding sections, shall violate or fail to comply with any rule, regulation or order made by the utilities and transportation commission, after an inquiry and hearing as provided in the preceding section, such person, firm or corporation, shall be subject to a penalty of not to exceed one thousand dollars for each and every violation thereof, and in addition thereto such right of way, private road, skid road, flume, canal, watercourse or other easement and all improvements and structures on such right of way, and connected therewith, shall revert to the state or to the owner of the land over which such right of way is located, and may be recovered in an action instituted in any court of competent jurisdiction.

[1982 1st ex.s. c 21 § 170; 1927 c 255 § 82; RRS § 7797-82. Prior: 1911 c 109 § 5. Formerly RCW 79.36.050.]

Notes:

Savings--Captions--Severability--Effective dates--1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Similar enactment: RCW 79.36.280.

RCW 79.01.336- 79.36.430 ~~Certain state lands subject to easements for removal of valuable materials—Forfeiture for nonuser.~~

Any such right of way heretofore granted which has never been used, or has ceased to be used for the purpose for which it was granted, for a period of two years, shall be deemed forfeited. The forfeiture of any such right of way heretofore granted, or granted under the provisions of the preceding sections, shall be rendered effective by the mailing of a notice of such forfeiture to the grantee thereof at his or her last known post office address and by stamping a copy of such certificate, or other record of the grant, in the office of the ~~commissioner of public lands~~ lands department with the word "canceled", and the date of such cancellation.

[1927 c 255 § 84; RRS § 7797-84. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45. Formerly RCW 79.36.070.]

Notes:

Similar enactment: RCW 79.36.290.

RCW ~~79.01.340~~ 79.36.440 Right of way for public roads and streets over, or for county wharves upon, state lands.

Any county or city or the United States of America or state agency desiring to locate, establish, and construct a road or street over and across any state lands of the state of Washington shall by resolution of the board of county commissioners of such county, or city council or other governing body of such city, or proper agency of the United States of America, or state agency, cause to be filed in the office of the department ~~of natural resources~~ a petition for a right of way for such road or street, setting forth the reasons for the establishment thereof, accompanied by a duly attested copy of a plat made by the county or city engineer or proper agency of the United States of America, or state agency, showing the location of the proposed road or street with reference to the legal subdivisions, or lots and blocks of the official plat, or the lands, over and across which such right of way is desired, the amount of land to be taken and the amount of land remaining in each portion of each legal subdivision or lot or block bisected by such proposed road or street.

Upon the filing of such petition and plat the department ~~of natural resources~~, if deemed for the best interest of the state to grant the petition, shall cause the land proposed to be taken to be inspected and shall appraise the value of the land and valuable materials thereon and notify the petitioner of such appraised value.

If there are no valuable materials on the proposed right of way, or upon the payment of the appraised value of the land and valuable materials thereon, to the department ~~of natural resources~~ in cash, or by certified check drawn upon any bank in this state, or money order, except for all rights of way granted to the department ~~of natural resources~~ on which the valuable materials, if any, shall be sold at public auction or by sealed bid, the department may approve the plat filed with the petition and file and enter the same in the records of ~~his or her~~ its office, and such approval and record shall constitute a grant of such right of way from the state.

[2001 c 250 § 12; 1982 1st ex.s. c 21 § 171; 1961 c 73 § 5; 1945 c 145 § 1; 1927 c 255 § 85; Rem. Supp. 1945 § 7797-85. Prior: 1917 c 148 § 9; 1903 c 20 § 1; 1897 c 89 § 35; 1895 c 178 § 46. Formerly RCW [79.36.080](#).]

NOTES:

Savings -- Captions -- Severability -- Effective dates -- 1982 1st ex.s. c 21: See RCW [79.96.901](#) through [79.96.905](#).

RCW ~~79.01.344~~ 79.36.450 Railroad right of way.

A right of way through, over and across any state lands not held under a contract of sale, is hereby granted to any railroad company organized under the laws of this state, or any state or territory of the United States, or under any act of congress of the United States, to any extent not exceeding fifty feet on either side of the center line of any railroad now constructed, or hereafter to be constructed, and for such greater width as is required for excavations, embankments, depots, station grounds, passing tracks or borrow pits, which extra width shall not in any case exceed two hundred feet on either side of said right of way.

[1927 c 255 § 86; RRS § 7797-86. Prior: 1907 c 104 § 1; 1901 c 173 § 1. Formerly RCW 79.36.090.]

Notes:

Railroad rights of way: Chapter 81.52 RCW.

RCW ~~79.01.348~~ 79.36.460 Railroad right of way--Procedure to acquire.

In order to obtain the benefits of ~~the preceding~~ section 79.36.450 RCW any railroad company hereafter constructing, or proposing to construct, a railroad, shall file with the ~~commissioner of public lands department~~ a copy of its articles of incorporation, due proof of organization thereunder, a map or maps, accompanied by the field notes of the survey, showing the location of the line of said railroad, the width of the right of way and extra widths, if any, and shall pay to the ~~commissioner of public lands department~~ as hereinafter provided the amount of the appraised value of the lands included within ~~said~~ the right of way, and extra widths if any are required, and the damages to any lands affected by ~~such~~ the right of way or extra widths.

[1927 c 255 § 87; RRS § 7797-87. Prior: 1907 c 104 § 1; 1901 c 173 § 1. Formerly RCW 79.36.100.]

RCW ~~79.01.352~~ 79.36.470 Railroad right of way--Appraisement.

All state lands over which a right of way of any railroad to be hereafter constructed, shall be located, shall be appraised in the same manner as in the case of applications for the purchase of state lands, fixing the appraised value per acre for each lot or block, quarter section or subdivision thereof, less the improvements, if any, and the damages to any state lands affected by such right of way, shall be appraised in like manner, and the appraisement shall be recorded and the evidence or report upon which the same is based shall be preserved of record, in the office of the ~~commissioner of public lands department~~, and the ~~commissioner department~~ shall send notice to the railroad company applying for the right of way that such appraisement has been made.

[1927 c 255 § 88; RRS § 7797-88. Prior: 1901 c 173 §§ 2, 5. Formerly RCW 79.36.110.]

RCW ~~79.01.356~~ 79.36.480 Railroad right of way--Improvements--Appraisal, deposit, etc.

Should any improvements, made by anyone not holding adversely to the state at the time of making such improvements or made in good faith by a lessee of the state whose lease had not been canceled or was not subject to cancellation for any cause, or made upon the land by mistake, be upon any of such lands at the time of the appraisement, the same shall be separately appraised, together with the damage and waste done to said lands, or to adjacent lands, by the use and occupancy of the same, and after deducting from the amount of the appraisement for improvements the amount of such damage and waste, the balance shall be regarded as the value of said improvements, and the railroad company, if not the owner of such improvements, shall deposit with the ~~commissioner of public lands department~~ the value of the same, as shown by ~~said~~ the appraisement, within thirty days next following the date thereof. The ~~commissioner of public lands department~~ shall hold such moneys for a period of three months, and unless a demand and proof of ownership of such improvements shall be made upon the ~~commissioner department~~ within said period of three months, the same shall be deemed forfeited to the state and deposited with the state treasurer and paid into the general fund. If two or more persons shall

file claims of ownership of said improvements, within said period of three months, with the ~~commissioner of public lands department~~, the ~~commissioner department~~ shall hold such moneys until the claimants agree or a certified copy of the judgment decreeing the ownership of said improvements shall be filed with ~~him~~ the department. When notice of agreement or a certified copy of a judgment has been so filed, the ~~commissioner of public lands department~~ shall pay over to the owner of the improvements the money so deposited.

[1927 c 255 § 89; RRS § 7797-89. Prior: 1915 c 147 § 13; 1901 c 173 § 4. Formerly RCW 79.36.120.]

RCW ~~79.01.360~~ 79.36.490 Railroad right of way--Release or payment of damages as to improvements outside right of way.

When the construction or proposed construction of said railroad affects the value of improvements on state lands not situated on the right of way or extra widths, the applicant for said right of way shall file with the ~~commissioner of public lands department~~ a valid release of damages duly executed by the owner or owners of such improvements, or a certified copy of a judgment of a court of competent jurisdiction, showing that compensation for the damages resulting to such owner or owners, as ascertained in accordance with existing law, has been made or paid into the registry of such court.

[1927 c 255 § 90; RRS § 7797-90. Prior: 1915 c 147 § 13; 1901 c 173 § 4. Formerly RCW 79.36.130.]

RCW ~~79.01.364~~ 79.36.500 Railroad right of way--Certificate.

Upon full payment of the appraised value of any right of way for a railroad and of damages to state lands affected, the ~~commissioner of public lands department~~ shall issue to the railroad company applying for such right of way a certificate in such form as the ~~commissioner of public lands department~~ may prescribe, in which the terms and conditions of said easement shall be set forth and the lands covered thereby described, and any future grant, or lease, by the state, of the lands crossed or affected by such right of way shall be subject to the easement described in the certificate.

[1927 c 255 § 91; RRS § 7797-91. Prior: 1915 c 147 § 14; 1901 c 173 § 7. Formerly RCW 79.36.140.]

RCW ~~79.01.384~~ 79.36.510 Right of way for Utility pipe lines, transmission lines, etc.

A right of way through, over, and across any state lands or state forest lands, may be granted to any municipal or private corporation, company, association, individual, or the United States of America, constructing or proposing to construct, or which has heretofore constructed, any telephone line, ditch, flume, or pipe line for the domestic water supply of any municipal corporation or transmission line for the purpose of generating or transmitting electricity for light, heat, or power.

[1982 1st ex.s. c 21 § 172; 1961 c 73 § 6; 1945 c 147 § 1; 1927 c 255 § 96; Rem. Supp. 1945 § 7797-96. Prior: 1925 c 6 § 1; 1921 c 148 § 1; 1919 c 97 § 1; 1909 c 188 § 1. Formerly RCW 79.36.150.]

**RCW ~~79.01.388~~ 79.36.520 ~~Right of way for~~ Utility pipe lines, transmission lines, etc.--
Procedure to acquire.**

In order to obtain the benefits of the grant made in RCW ~~79.01.384~~ 79.36.510, the municipal or private corporation or company, association, individual, or the United States of America, constructing or proposing to construct, or which has heretofore constructed, such telephone line, ditch, flume, pipe line or transmission line, shall file, with the ~~commissioner of public lands~~ department, a map, accompanied by the field notes of the survey and location of such telephone line, ditch, flume, pipe line or transmission line, and shall make payment therefor as provided in RCW ~~79.01.392~~ 79.36.530. The land within the right of way shall be limited to an amount necessary for the construction of said telephone line, ditch, flume, pipe line or transmission line sufficient for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same, and the grant shall include the right to cut all standing timber, and/or reproduction within said right of way. The grant shall also include the right to cut trees marked as danger trees by the applicant outside of the right of way, which shall be dangerous to the operation and maintenance of the telephone line, ditch, flume, pipe line or transmission line upon full payment of the appraised value thereof.

[1961 c 73 § 7; 1959 c 257 § 35; 1945 c 147 § 2; 1927 c 255 § 97; Rem. Supp. 1945 § 7797-97. Prior: 1921 c 148 § 2; 1919 c 97 § 2; 1909 c 188 § 2. Formerly RCW 79.36.160.]

**RCW ~~79.01.392~~ 79.36.530 ~~Right of way for~~ Utility pipe lines, transmission lines, etc. --
Appraisal -- Certificate -- Reversion for nonuser.**

Upon the filing of the plat and field notes, as provided in RCW ~~79.01.388~~ 79.36.520, the land applied for and the valuable materials on the right of way applied for, and the marked danger trees to be felled off the right of way, if any, and the improvements included in the right of way applied for, if any, shall be appraised as in the case of an application to purchase state lands. Upon full payment of the appraised value of the land applied for, or upon payment of an annual rental when the ~~department of natural resources~~ department deems a rental to be in the best interests of the state, and upon full payment of the appraised value of the valuable materials and improvements, if any, the ~~commissioner of public lands~~ department shall issue to the applicant a certificate of the grant of such right of way stating the terms and conditions thereof and shall enter the same in the abstracts and records in ~~his or her~~ its office, and thereafter any sale or lease of the lands affected by such right of way shall be subject to the easement of such right of way. Should the corporation, company, association, individual, state agency, political subdivision of the state, or the United States of America, securing such right of way ever abandon the use of the same for a period of sixty months or longer for the purposes for which it was granted, the right of way shall revert to the state, or the state's grantee.

[2001 c 250 § 13; 1961 c 73 § 8; 1959 c 257 § 36; 1945 c 147 § 3; 1927 c 255 § 98; Rem. Supp. 1945 § 7797-98. Prior: 1909 c 188 § 3. Formerly RCW 79.36.170.]

RCW ~~79.01.396~~ 79.36.540 Right of way for irrigation, diking and drainage purposes.

A right of way through, over and across any state lands is hereby granted to any irrigation district, or irrigation company duly organized under the laws of this state, and to any association,

individual, or the United States of America, constructing or proposing to construct an irrigation ditch or pipe line for irrigation, or to any diking and drainage district or any diking and drainage improvement district proposing to construct a dike or drainage ditch.

[1982 1st ex.s. c 21 § 173; 1945 c 147 § 4; 1927 c 255 § 99; Rem. Supp. 1945 § 7797-99. Prior: 1917 c 148 § 6; 1907 c 161 § 1. Formerly RCW 79.36.180.]

Notes:

Savings--Captions--Severability--Effective dates--1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

**RCW ~~79.01.400~~ 79.36.550 Right of way for irrigation, diking and drainage purposes--
Procedure to acquire.**

In order to obtain the benefits of the grant ~~hereinaabove~~ provided for in RCW 79.36.540, the irrigation district, irrigation company, association, individual, or the United States of America, constructing or proposing to construct such irrigation ditch or pipe line for irrigation, or the diking and drainage district or diking and drainage improvement district constructing or proposing to construct any dike or drainage ditch, shall file with the ~~commissioner of public lands~~ department a map accompanied by the field notes of the survey and location of the proposed irrigation ditch, pipe line, dike, or drainage ditch, and shall pay to the state as hereinafter provided, the amount of the appraised value of the said lands used for or included within such right of way. The land within said right of way shall be limited to an amount necessary for the construction of the irrigation ditch, pipe line, dike, or drainage ditch for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same.

[1945 c 147 § 5; 1927 c 255 § 100; Rem. Supp. 1945 § 7797-100. Prior: 1917 c 148 § 7; 1907 c 161 § 2. Formerly RCW 79.36.190.]

**RCW ~~79.01.404~~ 79.36.560 Right of way for irrigation, diking and drainage purposes--
Appraisal--Certificate.**

Upon the filing of the plat and field notes as ~~hereinaabove~~ provided in RCW 79.36.550, the lands included within the right of way applied for shall be appraised as in the case of an application to purchase such lands, at the full market value thereof. Upon full payment of the appraised value of the lands the ~~commissioner of public lands~~ department shall issue to the applicant a certificate of right of way, and enter the same in the records in ~~his~~ its office and thereafter any sale or lease by the state of the lands affected by such right of way shall be subject thereto.

[1927 c 255 § 101; RRS § 7797-101. Prior: 1907 c 161 § 3. Formerly RCW 79.36.200.]

RCW ~~79.01.408~~ 79.36.570 Grant of overflow rights.

The ~~commissioner of public lands~~ department shall have the power to grant to any person or corporation the right, privilege, and authority to perpetually back and hold water upon or over

any state lands, and overflow such lands and inundate the same, whenever the ~~commissioner~~ department shall deem it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use, but no such rights shall be granted until the value of the lands to be overflowed and any damages to adjoining lands of the state, appraised as in the case of an application to purchase such lands, shall have been paid by the person or corporation seeking the grant, and if the construction or erection of any such water power plant, reservoir, or works for impounding water for the purposes heretofore specified, shall not be commenced and diligently prosecuted and completed within such time as the ~~commissioner of public lands~~ department may prescribe at the time of the grant, the same may be forfeited by the ~~commissioner of public lands~~ department by serving written notice of such forfeiture upon the person or corporation to whom the grant was made, but the ~~commissioner~~ department, for good cause shown to ~~his~~ its satisfaction, may extend the time within which such work shall be completed.

[1982 1st ex.s. c 21 § 174; 1927 c 255 § 102; RRS § 7797-102. Prior: 1915 c 147 §§ 10, 11; 1907 c 125 §§ 1, 2. Formerly RCW 79.36.210.]

Notes:

Savings--Captions--Severability--Effective dates--1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Operating agencies: Chapter 43.52 RCW.

RCW 79.01.412- 79.36.580 Construction of foregoing sections ~~relating to rights of way and overflow rights.~~

The foregoing sections relating to the acquiring of rights of way and overflow rights through, over and across lands belonging to the state, shall not be construed as exclusive or as affecting the right of municipal and public service corporations to acquire lands belonging to or under control of the state, or rights of way or other rights thereover, by condemnation proceedings.

[1927 c 255 § 103; RRS § 7797-103. Formerly RCW 79.36.220.]

Notes:

Railroad rights of way: Chapter 81.52 RCW.

RCW 79.36.230 79.36.590 Easement reserved in later grants ~~for removal of materials, etc.~~

All state lands hereafter granted, sold or leased shall be subject to the right of the state, or any grantee or lessee or successor in interest thereof hereafter acquiring other state lands, or acquiring the timber, stone, mineral or other natural products thereon, or the manufactured products thereof to acquire the right of way over such lands so granted, for logging and/or lumbering railroads, private railroads, skid roads, flumes, canals, watercourses, or other easements for the purpose of and to be used in the transporting and moving of such timber, stone, mineral or other natural products thereon, and the manufactured products thereof from such state

land, and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products over and across the lands so granted or leased, upon the state or its grantee or successor in interest thereof, paying to the owner of the lands so granted, sold, or leased reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad seeking to condemn private property.

[1927 c 312 § 1; RRS § 8107-1. Prior: 1911 c 109 § 1.]

Notes:

Severability--1927 c 312: "If any section, subdivision, sentence or clause in this act shall be held invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional." [1927 c 312 § 8.] This applies to RCW 79.36.230 through 79.36.290.

Railroads, eminent domain: RCW 81.36.010 and 81.53.180.

Similar enactment: RCW 79.01.312.

RCW ~~79.36.240~~ 79.36.600 Private easement over state lands ~~subject to common user.~~

Every grant, deed, conveyance, lease or contract hereafter made to any person, firm or corporation over and across any state lands for the purpose of right of way for any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement to be used in the hauling of timber, stone, mineral or other natural products of the land and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products, shall be subject to the right of the state, or any grantee or successor in interest thereof, owning or hereafter acquiring from the state any timber, stone, mineral, or other natural products, or any state lands containing valuable timber, stone, mineral or other natural products of the land, of having such timber, stone, mineral or other natural products, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products transported or moved over such railroad, skid road, flume, canal, watercourse or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation or for the use of such railroad, skid road, flume, canal, watercourse or other easement, and upon complying with just, reasonable and proper rules affecting such transportation, which rates, rules and regulations shall be under the supervision and control of the utilities and transportation commission of the state of Washington.

[1983 c 4 § 7; 1927 c 312 § 2; RRS § 8107-2. Prior: 1911 c 109 § 2.]

Notes:

Similar enactment: RCW 79.01.316.

RCW ~~79.36.250~~ 79.36.610 Easement over ~~public~~ lands subject to common user.

Any person, firm or corporation hereafter acquiring the right of way or other easement over state lands or over any tide or shore lands belonging to the state, or over and across any

navigable water or stream for the purpose of transporting or moving timber, stone, mineral, or other natural products of the lands, and the manufactured products thereof and engaged in such business thereon, shall accord to the state or any grantee or successor in interest thereof hereafter acquiring state lands containing valuable timber, stone, mineral or other natural products of the land, or any person, firm or corporation hereafter acquiring the timber, stone, mineral or other natural products situate upon state lands, or the manufactured products thereof proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such timber, stone, mineral and other natural products of the land, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products under reasonable rules and regulations upon payment of just and reasonable charges therefor, or, if such right of way or other easement is not then in use to have the right to use such right of way or easement for transporting and moving such products under such reasonable rules and regulations and upon payment of just and reasonable charges therefor.

[1927 c 312 § 3; RRS § 8107-3. Prior: 1911 c 109 § 3.]

Notes:

Similar enactment: RCW 79.01.320.

RCW ~~79.36.260~~ 79.36.620 Reservations in grants and leases.

Whenever any person, firm or corporation shall hereafter purchase, lease or acquire any state lands, or any easement or interest therein, or any timber, stone, mineral or other natural products thereon, or the manufactured products thereof the purchase, lease or grant shall be subject to the condition or reservation that such person, firm or corporation, or their successors in interest, shall, whenever any of the timber, stone, mineral or other natural products on said lands or the manufactured products thereof are removed, by any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement, owned, leased or operated by such person, firm or corporation, or their successors in interest, accord to any other person, firm or corporation, or their successors in interest, having the right to remove any timber, stone, mineral, or other natural products or the manufactured products thereof from any other lands, owned or formerly owned by the state, proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such other timber, stone, mineral and other natural products, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting[,] manufacturing, mining or quarrying any or all of such products under reasonable rules and regulations and upon payment of just and reasonable charges therefor; and that any conveyance, lease or mortgage of such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement, shall be subject to the right of the person, firm or corporation, or their successors in interest, having the right to remove timber, stone, mineral or other natural products or the manufactured products thereof from such other state lands, to be accorded such proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such other timber, stone, mineral and other natural products and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products under reasonable rules - regulations and upon payment of just and reasonable charges therefor; and such purchase, lease

or grant from the state shall also be subject to the condition or reservation that whenever any of the timber, stone, mineral or other natural products on such lands or the manufactured products thereof are about to be removed, by means of any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement, not owned, controlled, or operated by the person, firm or corporation owning or having the right to remove, and about to remove such timber, stone, mineral or other natural products or the manufactured products thereof shall exact and require from the owners and operators of such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement, which shall be binding upon the successors in interest of such owners and operators, an agreement and promise, as a part of the contract for removal, and by virtue of RCW ~~79.36.230~~ 79.36.590 through ~~79.36.290~~ 79.36.650 there shall be deemed to be a part of any such express or implied contract for removal, an agreement, and promise that such owners and operators, and their successors in interest, shall accord to any person, firm or corporation and their successors in interest, having the right to remove any timber, stone, mineral or other natural products or the manufactured products thereof from any lands, owned, or formerly owned by the state, proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such timber, stone, mineral and other natural products and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products and under reasonable rules ~~and regulations~~ and upon payment of just and reasonable charges therefor.

[1927 c 312 § 4; RRS § 8107-4.]

RCW ~~79.36.270~~ 79.36.630 Duty of utilities and transportation commission.

Should the owner or operator of any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement operating over lands hereafter acquired from the state, as in RCW ~~79.36.230~~ 79.36.590 through ~~79.36.290~~ 79.36.650 set out, fail to agree with the state or with any subsequent grantee or successor in interest thereof as to the reasonable and proper rules ~~, regulations~~ and charges concerning the transportation of timber, stone, mineral or other natural products of the land, or the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products for carrying and transporting such products or for the use of the railroad, skid road, flume, canal, watercourse or other easement in transporting such products, the state or such person, firm or corporation owning and desiring to ship such products may apply to the utilities and transportation commission and have the reasonableness of the rules ~~, regulations~~ and charges inquired into and it shall be the duty of the utilities and transportation commission to inquire into the same in the same manner, and it is hereby given the same power and authority to investigate the same as it is now authorized to investigate and inquire into the rules ~~and regulations~~ and charges made by railroads and is authorized and empowered to make such order as it would make in an inquiry against a railroad, and in case such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement is not then in use, may ~~make~~ adopt such reasonable, proper and just rules ~~and regulations~~ concerning the use thereof for the purposes aforesaid as may be just and proper and such order shall have the same force and effect and shall be binding upon the parties to such hearing as though such hearing and order was made affecting a railroad.

[1983 c 4 § 8; 1927 c 312 § 5; RRS § 8107-5. Prior: 1911 c 109 § 4.]

Notes:

Similar enactment: RCW 79.01.324.

RCW ~~79.36.280~~ 79.36.640 Penalty for violating utilities and transportation commission's order.

In case any person, firm or corporation owning and/or operating any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement subject to the provisions of RCW ~~79.36.230~~ 79.36.590 through ~~79.36.290~~ 79.36.650 shall fail to comply with any rule, ~~regulation~~ or order made by the utilities and transportation commission, after an inquiry as provided for in RCW ~~79.36.270~~ 79.36.630, each person, firm or corporation shall be subject to a penalty not exceeding one thousand dollars, and in addition thereto, the right of way over state lands theretofore granted to such person, firm or corporation, and all improvements and structures on such right of way and connected therewith, shall revert to the state of Washington, and may be recovered by it in an action instituted in any court of competent jurisdiction, unless such state lands have been sold.

[1983 c 4 § 9; 1927 c 312 § 7; RRS § 8107-7. Prior: 1911 c 109 § 5.]

Notes:

Similar enactment: RCW 79.01.328.

RCW ~~79.36.290~~ 79.36.650 Applications--Appraisement--Certificate--Forfeiture--Fee.

Any person, firm or corporation shall have a right of way over public lands, subject to the provisions of RCW ~~79.36.230~~ 79.36.590 through ~~79.36.290~~ 79.36.650, when necessary, for the purpose of hauling or removing timber, stone, mineral, or other natural products or the manufactured products thereof of the land. Before, however, any such right of way grant shall become effective, a written application for and a plat showing the location of such right of way, with reference to the adjoining lands, shall be filed with the department of natural resources, and all timber on ~~said the~~ right of way, together with the damages to ~~said the~~ land, shall be appraised and paid for in cash by the person, firm or corporation applying for such right of way. The department of natural resources shall then cause to be issued in duplicate to such person, firm or corporation a right of way certificate setting forth the conditions and terms upon which ~~such the~~ right of way is granted. Whenever ~~said the~~ right of way shall cease to be used, for a period of two years, for the purpose for which it was granted, it shall be deemed forfeited, and ~~said the~~ right of way certificate shall contain such a provision: ~~PROVIDED, That~~ However, any right of way for logging purposes heretofore issued which has never been used, or has ceased to be used, for a period of two years, for the purpose of which it was granted, shall be deemed forfeited and shall be canceled upon the records of the department. One copy of each certificate shall be filed with the department and one copy delivered to the applicant. The forfeiture of ~~said the~~ right of way, as herein provided, shall be rendered effective by the mailing of notice of such a forfeiture to the grantee thereof to his or her last known post office address and by stamping the copy of ~~said the~~ certificate in the department canceled and the date of such cancellation. For the issuance of such a certificate the same fee shall be charged as provided in the case of certificates for railroad rights of way.

[1988 c 128 § 65; 1927 c 312 § 6; RRS § 8107-6. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45.]

Notes:

Certificates for railroad rights of way: RCW 79.01.364.

Fees, generally: RCW 79.01.720.

Similar enactment: RCW 79.01.332 and 79.01.336.